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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,083	12/01/2003	Gregory Plos	05725.1300-00	1669
22852	7590	05/12/2006	EXAMINER	
		FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413	ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/724,083	PLOS, GREGORY	
	<b>Examiner</b> Eisa B. Elhilo	<b>Art Unit</b> 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 February 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-29 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ .  | 6) <input type="checkbox"/> Other: _____ .                                  |

**DETAILED ACTION**

1 This action is responsive to the amendment filed on February 21, 2006.

***Priority***

2 This application claims benefit of 60/432,981 that filed on December 13, 2002 as recited by applicant in the Declaration that filed on February 21, 2006 (see page 2, in the Oath or Declaration). Accordingly, the data provided by applicant is consistent with PTO records.

3 The rejection of claims 1-11, 16-18 and 21-29 under 35 U.S.C. 102(e) as being anticipated by Lagrange et al. (US' 168 B1), is maintained for the reasons set forth in the previous office action that mailed on 10/20/2005.

4 The rejection of claims 1-15, 17-21 and 23-29 under 35 U.S.C. 102(e) as being anticipated by Javet et al. (US' 128 B2) is withdrawn because the reference is not a proper 102(e) reference.

5 The rejections of claims 22 and 16 under 35 U.S.C. 103(a) as being unpatentable over Javet et al. (US' 128 B2) and/or over Javet et al. (US' 128 B2) in view of Junino et al. (US' 129) are withdrawn because Javet et al. (US' 128 B2) is not a prior art.

New ground of rejection

***Claim Rejections - 35 USC § 102***

6 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-15, 17-21 and 23-29 are rejected under 35 U.S.C. 102(a) as being anticipated by Javet et al. (WO 01/85111 A1). The US Patent No. (US 6,740,128 B2) is used as English translation of the Patent WO 01/85111 A1.

Javet et al. (US' 128) teaches a hair dyeing composition comprising dialdehyde heterocyclic compound of 2,5-thiophene-dicarboxaldehyde (see col. 5, line 27) that reads on the claimed formula (I), in which R is 5-membered monoheterocyclic ring comprising a sulfur atom as claimed in claims 1-7 and a nitrogen compound of monoethanolamine that reads on the claimed formula (II) as claimed in claims 1 and 8-11 (see col. 5, line 33), wherein the nitrogen compound is 1,4-diaminobenzene (para-phenylenediamine) as claimed in claims 12-15 (see col. 5, line 35), wherein the amounts of carbonyl compounds and amines individually in the ranges of 0.01 to 10% which within the claimed ranges as claimed in claims 17-20 (see col. 6, lines 14-17) and wherein the dyeing composition has a pH in the range of 6 to 11 which within the claimed range as claimed in claim 21 (see col. 6, line 61). Javet et al. (US' 128) also teaches a process for dyeing hair and a multi-compartment device as claimed in claims 23-29 (see col. 7, lines 12-19 and col. 18, claim 11). Javet et al. (US' 128) teaches all the limitations of the instant claims. Hence, Javet et al. anticipates the claims.

#### ***Claim Rejections - 35 USC § 103***

7 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Javet et al. (WO 01/85111 A1). The US Patent (US 6,740,128 B2) is used as English translation of Patent WO 01/85111 A1.

The disclosure of Javet et al. (US' 128 B2) as described above, does not teach the claimed range of the pH of the composition.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a dyeing composition with the claimed pH range because the reference teaches a dyeing composition having a pH in the range of 6 to 11 (see col. 6, line 61) which is overlapped with the claimed range, and, thus, a person of the ordinary skill in art would expect such a composition to have similar properties to those claimed, absent unexpected results.

8 Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Javet et al. (WO 01/85111 A1) in view of Junino et al. (US 4,797,129). The US Patent No. 6,740,128 B2 is used as English translation of the Patent WO 01/85111 A1.

The disclosure of Javet et al. (US' 128 B2) as described above, does not teach aqueous ammonia as a nitrogen compound of the claimed formula (II).

However, Javet et al. (US, 128) suggests the use of alkalizing agents such as ammonium hydroxide for adjusting the pH of the composition (see col. 7, lines 4-7).

Junino et al. (US' 129) in analogous art of hair dyeing formulation, teaches a composition comprising alkalizing agents such as aqueous ammonia and or ammonium carbonate for adjusting the pH of the dyeing composition (see col. 6, lines 1-5).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Javet et al. (US' 128) by substituting the ammonium carbonate with the aqueous ammonia as taught by Junino et al. (US' 129) to make such a composition. Such a modification would be obvious because Junino et al. (US' 129) clearly teaches the equivalence between aqueous ammonia and ammonium carbonate as the alkalizing or basifying agents use to adjust the pH of the dyeing compositions, and, thus, a person of the ordinary skill in the art would be motivated to substitute the ammonium carbonate in the composition of Javet et al. with the aqueous ammonia as taught by Junino et al. in order to adjust the pH of the dyeing composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

***Response to Applicant's Arguments***

9       Applicant's arguments filed 2/21/2006 have been fully considered but they are not persuasive.

With respect to the rejection of claims 1-11, 16-18 and 21-29 under 102(e) as being anticipated by Lagrange et al. (US' 168 B1), Applicant argues that aldehydes are one of five possible categories for the second ingredient of Lagrange and thus for one of ordinary skill to choose aldehydes would require an inordinate amount of picking and choosing.

The examiner respectfully disagrees with the above arguments because a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegeaal Bros. v. Union Oil Co. of California*, 824 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed

anticipated if any of the structures or compositions within the scope of the claims is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). In this case Lagrange et al. (US' 168 B1) clearly teaches a dyeing composition comprising dialdehyde heterocyclic compound of 2,3-thiophene-dicarboxaldehyde as claimed (see col. 8, line 10) and a nitrogen compound of monoethanolamine and aqueous ammonia as claimed (see col. 11, lines 65-66). Therefore, Lagrange et al. teaches the limitations of the instant claims and thus, the rejection under 102(e) is proper and maintained.

With respect to the rejection of the claims 1-15, 17-21 and 23-29 in the light of the international Application (WO 01/85111 A1), Applicant argues that Javet et al. (WO' 111 A1) does teach dialdehyde heterocyclic compound 2,5-thiophene-dicarboxaldehyde among a laundry list suitable carbonyl compounds which require improper picking and choosing to obtain the presently claimed heterocyclic polyaldehyde.

The examiner respectfully disagrees with the above arguments for the same reasons mentioned above.

With respect to the rejection of claim 22 under 35 U.S.C. 103(a) as being unpatentable over Javet et al. Applicant argues that the examiner appears to be using the present claims as a blueprint to find the aspect from the disclosure of Javet, which support his rejection. Applicant also argues that the recitation does not provide any guidance or motivation to choose 2,5-thiophene-dicarboxaldehyde or any specific heterocyclic polyaldehyde and only with improper hindsight could one of ordinary skill in the art have reached the presently claimed invention, including the pH range from Javet.

The Examiner respectfully disagrees with these arguments because Javet et al. (US' 128 B2) clearly teaches that the dyeing composition has a pH in the range of 6 to 11 (see col. 6 line 61), which overlapped, with the claimed range (5 to 11). Further, with respect to the argument based on the lack of motivation to choose 2,5-thiophene-dicarboxaldehyde or any specific heterocyclic polyaldehyde, the examiner would like to point out that obviousness may be established by a general teaching in a prior art reference. See *In re Corkill*, 771 F.2d 1496, 1500, 226 USPQ 1005, 1008 (Fed. Cir. 1985) (Obviousness rejection of the claims affirmed in light of prior art teaching that “hydrated zeolites will work” in detergent formulation, even though “inventors selected the zeolites of claims from among ‘thousands’ of compounds”). See also *Merck v. Biocraft*, 874 F.2d 804, 807, 10 USPQ2d 1843, 1846 (Fed. Cir. 1989); *In re Susie*, 440 F.2d 442, 445, 169 USPQ 423, 425 (CCPA 1971).

Furthermore, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Therefore, the prima facie of obviousness has been established.

With respect to the rejection of claim 16 under 35 U.S.C. 103(a) as being unpatentable over Javet et al. in view of Junino et al. Applicant argues that there is no basis of suggestion or motivation one skilled in the art to select 2,5-thiophene-dicarboxaldehyde as an aldehyde

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component and /or to use aqueous ammonium as the nitrogen component with any reasonable expectation of success.

The examiner respectfully disagrees with the above arguments for the same reasons mentioned above.

#### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

April 29, 2006